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DIRECTOR'S OFFICE

OCT 17 2007

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

**TN Division Of Water  
Pollution Control**

**IN THE MATTER OF:**

**SHERMAN-DIXIE CONCRETE  
INDUSTRIES, INC.**

**Respondent**

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**DIVISION OF WATER  
POLLUTION CONTROL**

**Case No. WPC07-0173**

**PETITION FOR REVIEW**

Sherman-Dixie Concrete Industries, Inc. ("Respondent") respectfully requests that the Tennessee Water Quality Control Board review the Director's Order and Assessment ("Order") issued in the above-captioned matter by Paul E. Davis, Director of the Division of Water Pollution Control ("DWPC"), Tennessee Department of Environment and Conservation, on September 21, 2007.

1. Tennessee Code Annotated §§ 69-3-109(a)(3) and 69-3-115(a)(2)(B) provide that any person who has been ordered to take corrective action or against whom a civil penalty has been assessed by the Director may secure a review of this order or assessment by filing a petition for review by this Board within 30 days after the order or assessment is served.

2. Respondent's Petition for Review is timely filed.

3. Respondent submits that this Board should dismiss the Director's Order and Assessment for the following reasons, among others:

a. The allegations against Respondent as stated in the Director's Order and Assessment are not supported by a preponderance of the evidence.

b. On or about October 9, 2006, an employee of DWPC, having visited Respondent's plant site, advised one of Respondent's managers in a telephone conversation that Respondent's site was not required to have a storm water permit. Respondent reasonably and justifiably relied upon that statement. In January 2007, Respondent received notices of violation from the Metro Nashville Stormwater Program and DWPC. Thereafter, Respondent prepared and on March 26, 2007, submitted a notice of intent and a storm water pollution prevention plan under the Tennessee Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity ("TMSP"). As alleged in section XVII of the Order, Respondent was issued a Notice of Coverage under the TMSP bearing tracking number TNR053492 on June 11, 2007.

c. Upon information and belief, the metal corrugated discharge pipe from Respondent's site to Stoners Creek ("discharge pipe") first referred to in section IX of the Order is part of a storm water drainage system owned and/or operated by The Metropolitan Government of Nashville and Davidson County ("Metropolitan Government") and is not within the control of Respondent. Any improper discharge from the discharge pipe is at least in part the responsibility of the Metropolitan Government.

d. Upon information and belief, DWPC has not made a determination based on factual investigation that the discharge pipe connects Respondent's site to Stoners Creek as alleged in section IX of the Order.

e. Upon information and belief, storm water from properties owned and/or operated by parties other than Respondent is discharged through the discharge pipe and is at least in part the responsibility of those other parties.

f. Accordingly, the allegations seeking to establish Respondent's liability for discharges from the discharge pipe into Stoners Creek without a permit are not supported by a preponderance of the evidence.

4. Section XXI of the Order improperly seeks to compel certain actions by Respondent, including but not limited to the following:

a. Paragraphs 2 and 3 seek to compel Respondent to submit and carry out a corrective action plan to remove sediment from Stoners Creek. These requirements presuppose that Respondent discharged any sediment into Stoners Creek – a conclusion which DWPC itself has not yet reached based upon factual investigation, as evidenced by the requirement in paragraph 1 that Respondent identify all outfalls associated with discharge from Respondent's site, and by the reference in paragraph 4 to the mere possibility that Respondent's outfall may be identified as the discharge pipe into Stoners Creek. Hence, the requirements of paragraphs 2 and 3, as stated, are not properly imposed.

b. As noted above, the only outfall alleged to be involved in this case is a discharge pipe which, upon information and belief, is owned and/or operated by the Metropolitan Government. Stormwater from properties owned and/or operated by parties other than Respondent is discharged through the discharge pipe. Such discharge of storm water is at least in part the responsibility of those other parties and the Metropolitan Government. The only pollution alleged in the Order resulted from a discharge from this discharge pipe to Stoners Creek. Consequently, even assuming that the discharge pipe is found upon proper investigation to carry sediment from Respondent's site, Respondent is not solely responsible for the presence of sediment in, or the removal of sediment from, Stoners Creek.

c. DWPC seeks in paragraphs 2 and 3 of the Order to compel Respondent “to remove sediment from Stoners Creek.” These requirements are not limited to any particular area of Stoners Creek or to sediment discharged from Respondent’s site. Accordingly, the requirements of paragraphs 2 and 3 are overbroad and beyond the authority of DWPC.

d. Paragraph 4 seeks to compel Respondent to submit a notice of intent to be covered by the Tennessee General NPDES Permit for Discharges of Storm Water Runoff and Process Wastewater Associated with Ready Mixed Concrete Facilities. This permit, however, is inapplicable to respondent’s operations, because Respondent does not operate a ready mixed concrete facility at Respondent’s site, but rather operates a concrete product manufacturing facility (SIC Code 3272). Such facilities are covered under the Tennessee Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity, Sector E. As alleged in section XVII of the Order, Respondent was issued a Notice of Coverage under the TMSP bearing tracking number TNR053492 on June 11, 2007. Therefore, DWPC has determined that Respondent presently is covered under the proper general permit.

5. Respondent respectfully reserves the right to respond to the factual and legal allegations in the Order in more detail at the hearing before this Board.

WHEREFORE, Respondent respectfully requests:

1. That this Board conduct a hearing on this Petition for Review;
2. That this Board find that Respondent is not legally responsible for the violations alleged or for the civil penalty or corrective actions required by the Director’s Order;
3. That, if this Board should find that Respondent has violated the Act or regulations, the Board order only such reduced penalty and/or corrective actions as are justified by findings of fact based upon a preponderance of the evidence; and

4. That this Board grant Respondent such other and further relief as the Board shall deem appropriate.

Respectfully submitted,



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October 17, 2007